REMARKS/ARGUMENTS

The application has been carefully reconsidered in view of the Office Action of April 19, 2007. Applicant offers the following remarks in support of allowance, as directed to Examiner's specific rejections.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

RE: CLAIMS 1 and 3-10

The Office Action of April 19, 2007 rejects claims 1 and 3-14 under 35 U.S.C. §102(b) as being anticipated by Purdy, U.S. Patent No. 6,191,799.

APPLICANT'S RESPONSE RE: CLAIM 1

Applicant respectfully traverses Examiner's rejection. "Anticipation under Section 102 can be found only if a reference shows exactly what is claimed."1 Applicant submits that the present invention as claimed in Claim 1, or any other claim, is not anticipated by the disclosure of *Purdy*. *Purdy* does not identically disclose or describe what is claimed, exactly, or approximately, nor does *Purdy* suggest what is claimed.

Regarding anticipation, it is well established that "For a prior art reference to anticipate in terms of 35 USC §102, *every element of the claimed invention must be identically shown in a single reference*."[2] There is no identical disclosure or description of numerous elements of the claimed invention as required for the rejection to be proper.[3] Lastly, there can be no

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[1] *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985).

[2] *In Re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

[3] *In Re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

"anticipation by equivalents" as equivalents are a legal theory pertinent to obviousness under Section 103, not to anticipation under Section 102.[4]

Specifically:

1. *Purdy* does not disclose or describe association of the animated files with numeric ranges.

2. *Purdy* does not disclose or describe solving for a contest value between first and second product values of different products.

3. *Purdy* does not disclose or describe selecting an animated graphic file by association of the numeric range and the contest value.

The cited reference is non-analogous art, directed to a different endeavor.

Applicant respectfully submits that Examiner has misinterpreted selected expressions from the reference in asserting analogies to the present invention, using the present application as a blueprint. However, *Purdy* states clearly what it discloses:

> *"The present invention provides a data animation program for altering the appearance of an animated object which graphically represents data."*[5]

The above description is fully supported by the written description and several figures of *Purdy*. Both *Purdy* and the present invention relate to the display of data, and the use of animated graphics, and the similarities end there. The cited art (*Purdy*) is directed to a program for altering animated graphics to display real time data trends. The present invention is not a "*data animation program.*" The present invention is directed to a method for selecting an

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[4] *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989), cert. denied, 493 U.S. 853 (1989)

[5] U.S. Patent 6,191,799; col.1, ll. 53-55.

animated graphic file by mathematical relationship between predetermined product values representing product performances. There is no anticipation, teaching or suggestion of this by the cited art.

1. The cited reference teaches away from association of the animated files with numeric ranges.

The *Purdy* reference *teaches away* from this limitation. Specifically, the essence of *Purdy* is alteration of the displayed animation in response to changes in data. The teaching of *Purdy* cannot be accomplished contemporaneously with selection and display of alternative animated graphic files. The display of *Purdy* is altered, as the basis of conveying information to the viewer. Thus, *Purdy does not* associate selecting animated graphic files for different product values.

Examiner states the *Purdy* reference at col. 2, ll. 8-13, "teaches associating a plurality of animated graphic files with numeric ranges (Examiner's interpretation: it's inherent that market trading data contains numeric ranges). *Purdy* states:

> *In accordance with other aspects of the present invention, if the rate of alteration for the animated object exceeds the maximum rate of alteration, the data animation program alters the appearance of the animated object to indicate that the maximum percentage change in data allowed has been exceeded. For example, if the rate of alteration for the animated object is too great, the animated object may be made to blink or change color. Conversely, if there is no change in the data represented by the animated object, the data animation program does not alter the appearance of the animated object, e.g., the animated object remains fixed.*

Applicant submits that in a plain reading of the text cited by the Examiner, without misinterpretation or misconstruction, *Purdy* explicitly teaches *altering*, the one animation displaying the changing data trend, including making it blink or change colors if out of range of

the primary alteration (e.g., propeller speed). Thus, *Purdy* teaches away from *association of the animated files with numeric ranges.*

2. The cited reference <u>teaches away</u> from solving for a contest value between first and second product values of different products.

The *Purdy* reference also expressly *teaches away* from this limitation. Specifically, *Purdy* teaches displaying and independently altering a separate animated graphic for each data stream, side-by-side. [6]

> *"FIG. 3B depicts an embodiment of the present invention in which a plurality of the propeller objects 39 shown in FIG. 3A are displayed simultaneously. It will be appreciated from FIG. 3B that each individual propeller object 39 represents a different stock and that each propeller object occupies its own dedicated area on the client's display 26."* [7]

Thus, there is no disclosure or suggestion of mathematically resolving for a contest value for selection of an animated graphic file, as *Purdy* expressly *teaches away* from the use of this limitation.

Purdy discloses calculating a percentage change that represents the change in a stock's price.[8] The calculation in *Purdy* relates to fluctuations in one data stream, and the result is used to create animation by constantly altering the display for that data stream, and nothing else.

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[6] U.S. Patent 6,191,799; col.2, ll. 19-23; Fig 3b; col.5, ll. 64-67 – col. 6 ll. 1-2.

[7] U.S. Patent 6,191,799; col.5, ll. 64-67 – col. 6 ll. 1-2.

[8] *Purdy* at col. 10, ll. 25-35.

3. Purdy does not disclose or describe selecting an animated graphic file by association of the numeric range and the contest value.

As demonstrated in paragraphs 1 and 2 above, *Purdy* teaches away from association of the animated files with numeric ranges, and from solving for a contest value. It is therefore impossible to infer that *Purdy* thereafter discloses "selecting an animated graphic file by association of the numeric range and the contest value." Indeed, *Purdy* does not.

Nevertheless, Examiner states Claim 1 is anticipated because the *Purdy* reference discloses selecting an animated "object" by the user. *Purdy* at col. 7, ll. 64-66. Applicant respectfully disagrees and asserts that having a user select an animated object is vastly different from selecting an animated graphic file associated with a contest value.

In *Purdy*, the user may select an animated object to be varied by the user's own choice without any relation to any numeric range, and without relation to any contest value.[9] Both methods are unrelated to the teaching of the present invention and the express limitation of Claim 1.

First, the selected animated object in *Purdy* is not associated with a contest value. Secondly, the animated "objects" taught by *Purdy* and the animated graphic "files" claimed by Applicant are wholly dissimilar. The graphic file of the present invention may be an animated combat or an athletic competition sequence between multiple animated characters, or the like.[10] The animated object disclosed in *Purdy* is one animatable unit, such as a propeller whose animation (speed) goes up or down in response to a data stream in accordance with the program disclosed by *Purdy*.[11] Applicant's animated graphic file is neither altered nor does it represent

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[9] *Purdy* at col. 7, ll. 64-66.

[10] See U.S. Appl. 10/758,660; paragraph [0036].

[11] *Purdy* at col. 8, ll. 1-5.

one product or one piece of data. The animated graphic file in Claim 1 shows multiple characters and represents a comparison of the performance of two or more products. *Purdy's* displays an animated object responding to a single data stream such as for the fluctuations in the price of a stock. *Purdy* fails to disclose selecting a graphic file based on a contest value and displaying an animated contest representing competitive product performances of different products; so, it fails to anticipate Claim 1.

Because each and every element set forth in Claim 1 is neither expressly nor inherently described by the *Purdy* reference, Claim 1 is not anticipated under §102(b) and is thus allowable. *Purdy* simply discloses a method of tracking the history of a characteristic of one product and altering an animated graphic to reflect that history. The method of Claim 1, on the other hand, involves evaluating the performance of multiple products and displaying an animated contest, such as a combat or competition between two characters, that illustrates the quality of one product or service compared to that of another product or service.

APPLICANT'S RESPONSE RE: CLAIMS 3-10

Applicant respectfully traverses Examiner's rejection of Claims 3-10 because Claim 1 is distinguishable over the *Purdy* reference and is thus allowable. Since Claims 3-10 depend from an allowable Claim 1, they, too, are allowable.

RE: CLAIMS 11-14

> *The Office Action of April 19, 2007 rejects claims 1 and 3-14 under 35 U.S.C. §102(b) as being anticipated by Purdy, U.S. Patent No. 6,191,799. Examiner also states independent claims 11-14 are rejected under 35 U.S.C. §102(b) with the same rationale as in the* Claim 1 *rejection.*

APPLICANT'S RESPONSE RE: CLAIMS 11-14

Applicant respectfully traverses the Examiner's rejection of Claims 11-14. Again, a claim is anticipated only if "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. §2131. The *Purdy* reference does not disclose each and every element of Claims 11-14.

Examiner rejects Claims 11-14 under the same rationale for rejecting Claim 1, and Applicant respectfully traverses Examiner's rejections of Claims 11-14 using his same analysis in traversing Examiner's rejection of Claim 1. Instead of repeating the arguments made above, Applicant also emphasizes that the *Purdy* reference fails to disclose "determining a first product value representing a first product's performance," "determining a second product value representing a second product's performance," and "displaying an animated contest." The starting price and current price of a stock as disclosed in *Purdy* are not product values representing the performances of different products. They are real time data points reflecting *fluctuation* of a single observable data source (temperature, price). Again, this is because *Purdy* is directed to displaying *data trends* by *altering* an animated graphic in real time. These elements are set forth in Claims 11-14 but are neither described expressly nor inherently by *Purdy*; thus, Claims 11-14 are not anticipated by the reference under §102(b). Applicant also emphasizes Claims 13 and 14 set forth solving for contest values and selecting animated graphic files associated with the numeric range which includes the contest values. *Purdy* fails to disclose these elements anywhere in the reference, and so it does not anticipate Claims 13-14 under §102(b). Thus, Claims 11-14 are allowable claims.

The *Purdy* reference simply discloses a method of creating-controlling a displayed animated graphic to reflect fluctuations in a data stream, whereas Claims 11-14 claim methods of evaluating the performance of multiple products and displaying an animated contest that illustrates the quality of one product or service compared to that of other products or services. For the reasons discussed above, individually and collectively, claims 11-14 are distinguishable over *Purdy* and are allowable.

CONCLUSION

Applicant respectfully submits the claims are allowable over the prior art. Applicant believes this paper is responsive to each and every ground of rejection cited in the Office Action dated April 19, 2007 and respectfully requests favorable consideration of this application and its early allowance.

If the Examiner's anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests an interview before issuance of any such subsequent action with Supervisory Patent Examiner Kee Tung and Examiner Javid A. Amini.

The Examiner is invited to telephone the undersigned, applicant's attorney of record, to facilitate advancement of the present application.

Respectfully submitted,

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